

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

October 13, 2004

GSBCA 16430-RELO

In the Matter of SARAH J. ALLEN

Sarah J. Allen, Concord, CA, Claimant.

Mary C. Lanham, Chief, Travel Payment Center, Division of Accounting Operations, Program Support Center, Department of Health and Human Services, Rockville, MD, appearing for Department of Health and Human Services.

HYATT, Board Judge.

When a transferred employee, while occupying temporary quarters at the new permanent duty station, is required to perform several days temporary duty away from that duty station, he or she is not necessarily precluded from reimbursement of the lodging portion of temporary quarters subsistence expenses in addition to per diem received for his or her temporary duty. The claim for temporary quarters lodging expenses may be allowed if the agency determines that the employee acted reasonably in retaining those quarters during the period of the temporary duty assignment.

Background

In November 2003, claimant, Sarah J. Allen, relocated from Miami, Florida, to San Francisco, California, to accept a promotion within the Department of Health and Human Services (HHS). She was initially authorized sixty days of temporary quarters subsistence expenses (TQSE) and thereafter received two thirty-day extensions of TQSE until she was able to purchase a residence in the San Francisco area. She occupied temporary quarters from November 2, 2003, through March 1, 2004. While on TQSE, Ms. Allen occupied a monthly rental. She had a portion of her household goods delivered to her temporary quarters and parked her personal vehicle there as well.

During the period when temporary quarters were occupied, Ms. Allen also traveled on temporary duty for the agency. She was away from San Francisco on official business from December 1 to December 5, 2003, again from December 8 through December 12, 2003, and also from January 14 to January 16, 2004. She included lodging costs for these days in

her temporary quarters expenses vouchers but did not seek the costs of meals and incidental expenses (M&IE). She was also reimbursed for lodging and received an M&IE per diem amount for her temporary duty assignments.

The agency deducted twelve days of lodging expenses from her TQSE reimbursement, reasoning that she could not receive reimbursement for temporary lodging at her permanent duty station since she was not physically occupying the quarters on days when she was on official travel. The agency's position is that the regulations prohibit dual reimbursement of lodging. Ms. Allen has asked us to review this decision, noting that it would not have been feasible to vacate her apartment for these temporary duty assignments -- when she arrived in San Francisco her options for affordable temporary lodging were extremely limited. Thus, she did not have available to her any reasonable means of making alternative arrangements for her vehicle and belongings while on official government travel.

Discussion

The agency's position is grounded in the Federal Travel Regulation (FTR) provision that states that an employee may not receive a TQSE allowance if he or she is receiving another subsistence expenses allowance. 41 CFR 303-6.16 (2003). Essentially, this is a prohibition against collecting dual benefits. Ordinarily, the employee who travels on temporary official duty while eligible for TQSE is not paid TQSE benefits during that period, but is entitled instead to extend the TQSE period for the amount of time that he or she was on official travel.

The agency also relies on a General Accounting Office (GAO)¹ decision for its position. It cites us to Thomas H. Dega, B-247,061 (May 6, 1992), in which the employee took personal leave during the TQSE period. The issue in that case was how to calculate the daily cost of monthly lodging -- whether to divide the monthly rental by the thirty-day lease period or by the lesser number of days for which the employee was entitled to be paid TQSE. This is not dispositive of the issue in the instant matter - which is whether Ms. Allen may be reimbursed for temporary quarters lodging for days she was away on official travel.

There is, in fact, an exception to the rule that "dual" benefits may not be paid. In Paul G. Thibault, 69 Comp. Gen. 72 (1989), GAO examined this rule in a context similar to Ms. Allen's. There, a transferred employee, while occupying temporary quarters at his new permanent duty station, was required to perform several days temporary duty away from that duty station. He retained his temporary quarters during that absence and sought reimbursement as part of his temporary quarters subsistence expenses in addition to per diem received for his temporary duty. The employee contended that he retained his temporary lodging at his new duty station during his period of temporary duty because he had to have a place to store the bulk of the belongings he carried with him when he relocated and the lodging manager indicated that, if he gave up his room during his period of temporary duty, he might not be able to reacquire it or another room upon his return. GAO held that his claim for temporary quarters lodging expenses may be allowed if the agency determined that the

¹ Prior to mid-1996, travel and relocation benefit claims of federal civilian employees were resolved by GAO.

employee acted reasonably in retaining those quarters. The purpose of the FTR rule is to avoid paying employees twice for a single expense. Where the employee cannot readily move out of temporary lodging and must thereby absorb both the expense of temporary quarters lodging and TDY lodging, the employee in fact must defray both expenses. Thus, in instances where it would not be feasible to vacate temporary quarters to undertake travel away from the permanent duty station, the agency may permit the employee to claim both TQSE lodging expenses and TDY per diem allowances. Accord Carol A. Cassel, B- 254,216 (Jan. 11, 1994).

The Board adopted a similar analysis in Christine Griffin, GSBCA 15818-RELO, 02-2 BCA ¶ 31,925. There, the claimant was away from the office on temporary duty for six nights for which she also claimed temporary lodging expenses for the hotel where she stayed at the new permanent duty station. In that case the Board followed Thibault and Cassell, observing that "[i]f the agency reasonably believes that the employee did not act reasonably in retaining the hotel room in New Jersey while she was on temporary duty elsewhere, it may deduct [the cost of the room] from her recovery for each of those nights." 02-2 BCA at 157,733.

The agency has not suggested that it believes that the employee's actions in renting on a monthly basis and in retaining her temporary quarters while on official travel were unreasonable. Rather, it falls back on its interpretation of the FTR to preclude the remedy that Ms. Allen seeks. As we explain above, in the circumstances described, the regulations do not bar paying the full amount of TQSE for which Ms. Allen is eligible to the extent her actions in retaining her temporary lodgings were reasonable. If the agency has no further basis for disallowing Ms. Allen's claim, it should reimburse her.

CATHERINE B. HYATT
Board Judge